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in the

Supreme Court

of the

United States

October Term, 1981

THE STATE OF FLORIDA,

Petitioner,

vs.

WILLIE ALLEN GARRETT,

Respondent.

On Writ of Certiorari to the District Court of Appeal of Florida, Third District

PETITION FOR CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THAT PARTICULAR HOLDING OF *JACKSON V. INDIANA*, 406 U.S. 715 (1972), LIMITING THE LENGTH OF PRE-TRIAL DETENTION OF A LEGALLY INCOMPETENT DEFENDANT PURSUANT TO A PENDING CRIMINAL CHARGE, CAN VOID A FINAL JUDGMENT OF CONVICTION FOR FIRST-DEGREE MURDER ENTERED FOLLOWING A PLEA OF GUILTY, WHERE THAT DEFENDANT EVENTUALLY COULD BE LEGALLY COMPETENT ONLY BY MEANS OF PSYCHOTROPIC MEDICATION, WAS ADJUDICATED LEGALLY COMPETENT TO STAND TRIAL AFTER SEVEN YEARS FROM THE DATE OF HIS ARREST, WAS AT ALL TIMES CIVILLY COMMITTABLE AND WAS NOT SHOWN TO BE PREJUDICED IN HIS ABILITY TO DEFEND AS A RESULT OF THE LENGTH OF THE DELAY?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS RELIED ON FOR ALLOWANCE OF THE WRIT	18
CONCLUSION	23
APPENDIX	
Opinion of the District Court of Appeal of Florida, Third District	App. 1
Order of the District Court of Appeal of Florida, Third District Denying Rehearing	App. 5
Order of the Supreme Court of Florida Declining Jurisdiction	App. 6

TABLE OF CONTENTS (Continued)

Page

Motion for Rehearing Filed by the State of Florida in the District Court of Appeal of Florida, Third District ..... App. 8

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases	Page
Barker v. Wingo, 407 U.S. 514 (1972)	19
Brown v. Jaquith, 318 So.2d 856 (Miss. 1975)	22
Commonwealth v. Kerrigan, ___ Pa. Super. Ct. ___, 413 A.2d 729 (1979)	22
Commonwealth v. McQuaid, 464 Pa. 499, 347 A.2d 465 (1975)	20, 22
Campbell v. State, 265 Ark. 77, 576 S.W. 2d 938 (1979)	20
Fare v. Michael C., 442 U.S. 707 (1979)	21
Fry v. State, 529 P.2d 521 (Okla. Crim. App. 1974)	20
Gerstein v. Pugh, 420 U.S. 103 (1975)	19, 21
Harris v. State, 262 Ind. 208, 314 N.E. 2d 45 (1974)	20

TABLE OF AUTHORITIES (Continued)

Cases	Page
In re Beverly, 342 So.2d 481 (Fla. 1977)	21
Jackson v. Indiana, 406 U.S. 715 (1972)	18, 19, 21, 23
O'Connor v. Donaldson, 422 U.S. 563 (1975)	21
Oregon v. Hass, 420 U.S. 714 (1975)	21
People v. Ealy, 49 Ill. App. 3d 922, 365 N.E. 2d 149 (1977)	22
People v. Lang, 76 Ill. 2d 311, 391 N.E. 2d 350 (1979)	22
People v. Lang, 62 Ill. App. 3d 688, 378 N.E. 2d 1106 (1978)	20, 22
People v. Williams, 48 Ill. App. 3d 842, 362 N.E. 2d 1306 (1977)	22
State v. Bauer, ____ Minn. ____, 299 N.W. 2d 493 (1980)	20, 22
State v. Brown, 502 S.W. 2d 295 (Mo. 1973)	20

TABLE OF AUTHORITIES (Continued)

Cases	Page
State v. Durham, 545 P.2d 805 (Okla. Crim. App. 1976)	20
State v. Johnson, 579 S.W. 2d 771 (Mo. Ct. App. 1979)	20
State v. Superior Court of Maricopa County, 113 Ariz. 432, 556 P.2d 6 (1976)	22
State ex rel. Desinger v. Treffert, 85 Wis. 257, 270 N.W. 2d 402 (1978)	22
State ex rel. Haskins v. County Court of Dodge County, 62 Wis. 2d 250, 214 N.W. 2d 575 (1974)	22
State ex rel. Porter v. Wolke, 80 Wis. 2d 197, 257 N.W. 2d 881 (1977)	22
United States v. Beidler, 417 F.Supp. 608 (M.D. Fla. 1976)	20
United States v. Lancaster, 408 F.Supp. 225 (D.D.C. 1976)	20, 22
United States v. MacDonald, 435 U.S. 850 (1978)	19

TABLE OF AUTHORITIES (Continued)

Cases **Page**

United States v. Mills,
434 F.2d 266 (8th Cir. 1970) 20

United States ex rel. Daniels v. Johnston,
328 F.Supp. 100 (S.D.N.Y. 1971) 20

Weinstein v. Bradford,
423 U.S. 147 (1975) 21

Constitutions

U.S. CONST. amend. XIV, §1 1

OPINION BELOW

The opinion to be reviewed is reported as *Garrett v. State*, 390 So.2d 95 (Fla. 3d DCA 1980).

JURISDICTIONAL STATEMENT

The opinion of the District Court of Appeal of Florida, Third District was entered on November 4, 1980. (App. 1). Rehearing was denied by that court on December 8, 1980 (App. 5). The Supreme Court of Florida declined jurisdiction on April 10, 1981. (App. 6). Justice Lewis F. Powell, Jr. entered an order extending the time for filing this petition on June 2, 1981 and extended the time for filing to July 9, 1981.

This Court's jurisdiction is invoked pursuant to 28 United States Code Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, Section 1 of the Constitution of the United States provides that:

> ***[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE*

On July 7, 1970, Defendant Garrett was indicted for a first-degree murder committed on May 23, 1970. On October 7, 1970, Defendant Garrett and two other persons were charged with a second-degree arson, also committed on May 23, 1970. (R. 1-1 [A]; 129-129 [A]). Garrett faced maximum sentences of death and ten years respectively.

The arson, consisting of firebombing of a bar, occurred at approximately 12:00 A.M. Shots had been fired. The homicide consisted of the shooting of a police officer approximately three hours later and four blocks away. The Defendant was arrested on the same day that both crimes were committed. (R. 1, 73; SR. 8).

Attorney Louis Beller, who had represented the Defendant at an earlier preliminary hearing, was formally appointed to represent Garrett on July 9, 1970, following an oral colloquy with the Defendant, himself. When the court attempted to arraign the Defendant on the homicide charge, his attorney stated both that the Defendant mentioned that he had hallucinations and that the Defendant either attempted suicide or had cut his wrist. This attorney also stated that he uncovered a previous commitment to a mental institution in Texas. Attorney

*The record on appeal will be referred to by the symbol "R". That portion of the record on appeal bound and designated as the transcript of proceedings will be referred to by the symbol "TR". The supplemental record on appeal will be referred to by the symbol "SR". Pleadings filed directly in the lower appellate court subsequent to the filing of the record on appeal will be mentioned without a record citation, because none exists. The appendix to this petition will be referred to by the symbol "App".

Beller pled the Defendant not guilty and not guilty by reason of insanity. The defense then requested appointment of psychiatrists to examine the Defendant. The State requested a speedy trial in the interest of justice. Defense counsel objected, based on the need to assess Garrett's competency to stand trial and defense counsel's belief that Garrett "may be too insane to cooperate with counsel." The trial judge stated that he was going to give the Defendant a speedy trial, but put off setting a trial date until after a competency hearing. (R. 63-75).

Pursuant to a court order, a psychiatrist, Dr. Mutter, evaluated the Defendant. His written report revealed the following: Conversation with the Defendant revealed prior violent behavior, shock treatment, and a four year hospitalization in Texas from 1964 to 1968 where he had been given psychiatric treatment and placed on different tranquilizers. Garrett told this psychiatrist of hearing voices, of "other incidents of cutting up people," and of cutting himself in jail because "Little Mama made [him] do it." Garrett also revealed some facts concerning the homicide. Dr. Mutter diagnosed the Defendant as having paranoid schizophrenia and concluded that the Defendant was "currently incapable of aiding in the preparation of his own defense." Dr. Mutter concluded that "[b]ased on available history, it is within medical probability" that Garrett was insane at the time of the crime, and stated, "I consider him extremely dangerous to himself and others." (R. 142-143).

On September 14, 1970, a competency hearing was held. (TR. 1). Psychiatrist Jacobson testified that Garrett was suffering from paranoid schizophrenia, and was

probably so afflicted for the past five to ten years. Dr. Jacobson felt "with some reservations" that Garrett was competent to stand trial. This psychiatrist qualified that "my principal concern in terms of his ability to stand trial would be in insuring that he could maintain his attentiveness and ability during trial." Dr. Jacobson stated that Garrett's prognosis was "poor for a significant long-term remission and that future episodes are likely to recur," and testified that Garrett was a danger to society at this time. Dr. Jacobson recommended that the Defendant "should be admitted to a facility for long-term treatment." (TR. 4-10).

Dr. Jaslow, a psychiatrist, testified that Garrett was able "to relate to me the circumstances surrounding the . . . crime" and was "probably" competent to stand trial. However, under defense questioning, Dr. Jaslow stated that there was a "possibility" that Garrett might not be able to assist his attorney. As to future prognosis, this psychiatrist believed that Garrett's schizophrenic illness was chronic and that "there would be eligibility . . . for repeated episodes of the disturbance where it comes out . . . , more openly, other times with remissions either with or without medication," and that Garrett's condition would deteriorate without "extended help." Dr. Jaslow did note that it was conceivable that Garrett could decompensate more during the course of a trial. This psychiatrist was of the opinion that it was "possible" that violence could occur in the future and recommended that present hospitalization and intensive treatment "would be the best thing" for the Defendant's benefit. (TR. 10-18).

Dr. Mutter testified, consistently with his above-summarized written report, that the Defendant was

not competent to stand trial, that the illness could go into a period of remission but reoccur, and that the nature of Garrett's delusions make him "extremely dangerous." This psychiatrist elucidated that if the voice told Garrett to kill the judge, "he would get out of his chair and try to kill [the judge] or me or anybody in this room." Garrett was a person of violent propensities, who might be a danger to himself and those surrounding him. Dr. Mutter recommended commitment to an institution. (TR. 21-25).

The judge adjudicated the Defendant incompetent to stand trial and committed him to a state hospital in Chatahoochee, Florida.[1] (TR. 27-29).

In an October, 1971 letter, the hospital indicated that Garrett was competent to stand trial. (R. 140-141). The trial judge appointed the same three psychiatrists to evaluate Garrett. (R. 149). In their November reports, the psychiatrists expressed different views. While noting that the Defendant had been receiving large doses of anti-psychotic medication, Drs. Jaslow and Jacobson concluded that Garrett was competent to stand trial. Dr. Jacobson asserted that Garrett's remission was "marginal." Dr. Jaslow indicated that the Defendant "may have been" acutely psychotic at the time of the crime, but that this doctor lacked objective material to

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[1]Prior t the competency ruling, defense counsel indicated a willingness to waive a jury trial. The court responded that such "is always a problem from decisions around the country, whether you can waive [jury] in circumstances like this." (TR. 26). Contrary to what the lower appellate court indicated, the record does not reflect that Garrett waived his right to a jury trial either at this time or at any time prior to his 1978 plea.

permit a valid opinion. Dr. Mutter stated that Garrett could not be properly evaluated because he was on high doses of anti-psychotic medicine, that Garrett was going into remission, and that, if Garrett was released, he could become dangerous to himself and the community. Dr. Mutter expressly recommended that Garrett be withdrawn from all medication for a minimal period of thirty days and then be reevaluated to determine his competency to stand trial. (R. 136-139, 144-145). The trial judge received a request from one state hospital that judges not order the hospital to accept patients without medication, due to limitations on hospital capacity. The trial judge then wrote to the three psychiatrists and, in light of the hospital's request, asked to be advised if they still believed that Garrett should be returned to the hospital with instructions that he should be taken off medication and then should be reevaluated. Approximately ten days later, the judge ordered that Garrett be returned to the hospital, and that the hospital withdraw all medication and reevaluate him to determine his competence to stand trial. (R. 42-44, 148).

A different judge was assigned to try Garrett's arson charge. The Defendant remained at the jail and appeared before the second judge in March of 1972. When his case was called, Garrett rose in the jury box, holding what turned out to be a fake bomb which he had ignited. The entire courtroom was evacuated. After being informed that the first judge had ordered Garrett to the hospital, the second judge ordered Garrett to the hospital "as soon as practically possible." (SR. 2-6).

In September of 1972, the hospital sent a letter to defense counsel, which stated that Garrett had not

been given medication and that, without medication, Garrett had remained competent. Defense counsel had filed a motion to have the Defendant returned to Miami, Florida to be reevaluated for competency to stand trial. A November, 1972 letter from the hospital to the court stated that Garrett had been without medication for six weeks and was deemed competent to stand trial. In March of 1973, the trial judge appointed five doctors to evaluate Garrett, including the three previous psychiatrists and two new psychologists. (R. 146, 157, 159-160, 172).

In their April, 1973 reports, all three psychiatrists and one psychologist concluded that Garrett was incompetent to stand trial, represented a serious danger to himself and others, and needed hospital treatment. Both Drs. Jaslow and Jacobson described Garrett as probably more disturbed now than in the past. Dr. Jaslow suggested additional treatment at a hospital with the recommendation that "medications could be helpful." Dr. Jacobson described the Defendant's behavior as "quite unpredictable." Dr. Mutter recommended that Garrett be recommitted until he went into remission, and "suggested that, when he is felt to be in remission, he be withdrawn from all medication for a minimal period of sixty days to determine his ability to remain emotionally stable." Noting that Garrett had "a great lability" and had demonstrated that his illness could easily be exacerbated, Dr. Mutter stated that Garrett "should not be released under any circumstances." (R. 173-178, 180-182).

On April 12, 1973, the judge, who was assigned to the homicide case, held a hearing and recommitted

Garrett to the hospital with instructions that, after it was determined that Garrett had gone into remission, Garrett's medication should be withdrawn for sixty days to determine his ability to remain emotionally stable. Defense counsel orally moved to have Garrett adjudicated not guilty by reason of insanity pursuant to a new Florida rule of criminal procedure, Fla.R.Crim.P. 3.210(a)(5) (1973). That motion was denied. Several days later, Garrett appeared before the second judge who was assigned to the arson case. That judge reserved ruling on the same motion, but stated that he would rule in accordance with the appellate court decision which would result from the defense's appeal of the first judge's ruling on Garrett's motion for an adjudication of insanity. (TR. 39-44; R. 131, 179, 184). That appeal was subsequently dismissed in October of 1973. *Garrett v. State*, 283 So.2d 905 (Fla. 3d DCA 1973).

Pursuant to the hospital's request that Garrett be returned, an order was entered in March of 1974, that the Defendant be returned to Miami and evaluated by Drs. Mutter and Jaslow. This order *did not* contain a prohibition on giving medication to the Defendant. In their April, 1974 reports, both psychiatrists found Garrett competent to stand trial. However, Dr. Mutter ended his report by stating (1) that Garrett "cannot be properly evaluated when he is under such high doses of anti-psychotic drugs," (2) that it was "most probable" that Garrett would decompensate and become a danger to himself and others, if his medication was stopped, (3) that the ideal form of treatment for Garrett would be rehospitalization and continued psychiatric treatment "until he is at the point where he might be able to remain in remission without the use of anti-psychotic drugs," and (4) that Garrett was "still unstable and

should be returned to a confined setting until he [was] more stabilized," be given further treatment and be reexamined "to determine his ability to maintain stabilization in the community." (R. 190, 194-198).

The homicide case was reassigned to the judge who had been assigned to the arson case. (R. 193). At a June 26, 1974 hearing, it was revealed that Garrett had "attacked one of the [jail] nurses who went to administer medication." *Defense counsel* asserted that, based on his conduct in the jail, Garrett was not competent to stand trial now and would probably never be competent to stand trial. Defense counsel moved to have the Defendant declared not guilty by reason of insanity and committed to a mental hospital. This trial judge stated that he had "no report that says [Garrett] will never be competent" and that the last report to the court was that Garrett was competent. The judge denied the defense request "to just instanter find him not guilty by reason of insanity" and ordered Garrett recommitted to a hospital. The written commitment order contained *no* prohibition regarding the administration of medication to the Defendant. (TR. 46-51; R. 3).

In mid-August of 1974, approximately one and one-half months after the last court hearing, the hospital wrote the court and communicated that Garrett was on medication, that he was competent to stand trial, that he could only be maintained in remission by medication, and that he had "the potential for dangerous behavior in the community." The hospital also wrote that Garrett's commitment "ought not to continue indefinitely and that some other disposition be considered." (R. 4-5). In

September of 1974, the trial judge denied the hospital's request to return Garrett to court "at this time." (R. 6).

In November of 1974, the hospital presented Garrett's case to a hearing examiner, who ordered Garrett involuntarily hospitalized for a four month period. In May of 1975, Garrett again appeared before a hearing examiner, who ordered Garrett involuntarily hospitalized for one year and recommended that he be returned to court. (R. 10).

A third judge was now assigned both cases. In August of 1975, the hospital requested that Garrett be returned to court. A July, 1975 hospital memorandum reflected that Garrett was on medication and had received psychotherapy, occupational therapy and recreational therapy. This memorandum revealed that Garrett engaged in fighting and aggressive behavior on several occasions, and that, as a result, Garrett spent his entire stay in the hospital on a closed ward. (R. 8-10). The trial judge ordered Garrett returned and appointed Drs. Mutter, Jaslow and Jacobson to examine him. (TR. 59-63, R. 11-12).

In their September, 1975 reports, all three psychiatrists opined that Garrett was competent to stand trial, although two of these doctors observed that Garrett was receiving "very high doses" of psychotropic medication. During an interview with Dr. Mutter, the Defendant was able to relate facts concerning

the homicide.[2] Dr. Mutter also expressed his view that "[d]espite the outcome of this case [Garrett] should not be released under any circumstances unless it can be shown that he can function in a normal manner, and not be dangerous to himself or others with reduced medication." (R. 15-21).

A trial court hearing was held on October 2, 1975. A prosecutor stated that the Defendant was heavily medicated and requested that the Defendant be taken off medication and evaluated. That prosecutor stated, "It's like chaining a man down so he can't move his arms, legs or anything, and [saying], 'Well, he didn't swing at me.' I mean it is just absurd to evaluate a man this way." Defense counsel requested that Garrett be permitted to stand trial, based on the psychiatric reports. After argument, the trial judge changed her mind and granted the prosecutor's request, stating, "I don't think that's the meaning of the law. The law is if he is competent to stand trial. It doesn't say if he takes enough medicine not to be violent he is competent to stand trial." That day the judge entered a written order directing that the jail refrain from giving any medication to the Defendant, and appointing psychiatrists to reexamine the Defendant. (TR. 65-68; R. 22).

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[2]This report provides: "[Garrett] stated, 'We were at a night club. Me and my friend were there. I tried to tell the police that I was sick and wanted to go to the hospital. I could recognize my sickness but I had it before. I was hearing voices. The police came and stopped my friend and me. The police were beating on him. I told him to run. He ran. I ran and then came back to the scene. The police officer was staggering. I got a gun and told him to stop. He turned around. I thought he was going to shoot me, then I shot him.' "

In their November, 1975 reports, both psychiatrists concluded that Garrett had severely regressed and was no longer competent to stand trial, as a result of the withdrawal of medication. Dr. Mutter stated that Garrett should not be released under any circumstances because he was "extremely dangerous." That doctor also stated, "It is quite apparent that his former psychiatric treatment consisted only of drug therapy and not any type of psychotherapy where he could have gained insight into his problem and gained greater ego strength." Dr. Mutter recommended that Garrett be recommitted to a hospital "for long-term treatment, psychotherapy as well as chemotherapy, so that he may be properly rehabilitated to the extent that he does not pose a danger to himself or others." (R. 201-204).

On December 3, 1975, defense counsel requested a hearing to have the Defendant adjudicated not guilty by reason of insanity on the grounds that there was no substantial probability that Garrett would become competent in the forseeable future, and that no progress was being made toward the goal of making Garrett competent. The trial judge noted that insanity at the time of the commission of the crime was a question of fact to be determined by the jury and denied the defense motion "at this time." Based on the recent psychiatric reports, the judge found that Garrett was incompetent to stand trial "at this time" and recommitted him to a hospital. (TR. 74-79; R. 23, 205).

Hospital correspondence of June 4, 1976, requested that Garrett be returned to court, since Garrett was treated with "a full range of hospital programs including psychotherapy," had not been on psychotropic medication

for over two months and was legally competent. (R. 24-26). Ten days later, the hospital sent another letter requesting that Garrett be retained at the hospital because he had decompensated and was no longer competent to stand trial. (R. 27). In August of 1976, the hospital asserted that Garrett was competent to stand trial, and requested his return to court with the recommendation that Garrett should be kept on psychotropic medication, due to his tendency to decompensate in its absence. (R. 29-31).

The trial judge ordered that the Defendant should be returned to Miami, directed that he should be held in the jail for four months without medication, and appointed three psychiatrists to evaluate him. (TR. 85-88; R. 33, 37, 206).

In October of 1976, the trial court denied a defense motion (1) to have the judge adjudicate the Defendant not guilty by reason of insanity and civilly commit him, and (2) to provide the Defendant with medication immediately, on the ground that the court order depriving him of medication amounted to cruel and unusual punishment. (R. 135, 209-210 [A]).

After examining Garrett when he had been without psychotropic medication for several months, all three psychiatrists concluded in their February, 1977 reports that Garrett was not competent to stand trial. Based on his interview with the Defendant, Dr. Jacobson stated, "[T]here is some possibility that he does exaggerate and alter his symptomatology for conscious reasons," although he was suffering from a schizophrenic disturbance. That psychiatrist also rendered the opinion

that "there is a possibility and not an improbable or unlikely one, that the defendant could acquire competency for trial if he were maintained on anti-psychotic medication," while asserting that the converse would be true if the Defendant was not allowed to take medication. Dr. Jaslow noted that Garrett did express certain ideas that showed the ability to think and reason. Finally, Dr. Mutter also concluded that Garrett was homicidal, "should not be released under any circumstances," and had the propensity to repeat his homicidal behavior while in a psychotic state. That psychiatrist recommended that Garrett be committed to a mental facility "until . . . he is able to enter a state of remission without benefit of medication." (R. 211-220).

The defense filed a motion claiming (1) that the Defendant was entitled to discharge for violation of his federal and Florida rights to a speedy trial, (2) that Garrett's continued confinement on the basis of his incompetency violated due process under *Jackson v. Indiana*, 406 U.S. 715 (1972), and (3) that the judge should adjudicate the Defendant not guilty by reason of insanity and civilly commit him pursuant to the provisions of a Florida rule of criminal procedure. (R. 40-41).

On March 2, 1977, a lengthy hearing was held on the Defendant's motion. The defense stipulated that Garrett was presently incompetent and a possible danger to himself. Drs. Jaslow, Mutter and Jacobson all testified that there was a substantial probability that Garrett would be competent in the forseeable future, if the court permitted him to be maintained on psychotropic

medication. The trial judge asked Dr. Mutter whether, if Garrett were receiving intensive psychotherapy, he could conceivably regain competency to the point where he could be maintained on lighter doses of psychotropic medication and not decompensate if the medication was stopped for a short period of time. That psychiatrist answered that there was a "great possibility, even probability" that this could be done and that it "would give him a better chance than if he were just treated on medication alone." Dr. Jacobson testified that psychotropic medication had drawbacks, had side effects and was occassionally ineffective, but that Garrett tolerated his medication well and did not seem to suffer much in the way of secondary effects. Dr. Jaslow testified that he had not observed that Garrett was suffering from any side effects, and could not think of a medical reason for curtailing the medication if Garrett was not showing any serious side effects. The clinical director of one of the state hospitals testified that it was "poor" medical practice to deprive Garrett of his medication and that his hospital lacked enough staff to give verbal insight therapy. (TR. 91-184).

Following the taking of testimony, the prosecution requested that Garrett be recommitted, returned to competency, and, thereafter, maintained on psychotropic medication "so we can try him." The trial court denied Garrett's motion on all grounds, found the Defendant incompetent to stand trial "at this time" and committed him to the hospital. (TR. 199, 209-210; R. 41 [A], 45-46).

In August of 1977, the hospital informed the court that Garrett was competent to stand trial with medication. (R. 47-48). In October, the *defense* rejected a stipulation

that Garrett was competent to stand trial and requested a hearing on this issue. (R. 55-59).

On November 1, 1977, a competency hearing was held. The prosecution called five witnesses from the state mental hospital in support of its position that Garrett was competent. *Defense counsel Beller* argued that Garrett was not competent to stand trial, because he was in remission only due to psychotropic medication and because this attorney could not determine whether the medication would affect Garrett's ability to confer with counsel. The prosecutor argued that the unanimous opinion of all of the witnesses was that Garrett was competent to stand trial, and, further, that there were no indications by case law, statute or state court rules of criminal procedure that a defendant could not lawfully be tried while competent as a result of psychotropic medication. Following argument, the trial judge ruled that Garrett *was* competent to stand trial. (TR. 216-248; R. 62).

A December trial date was changed to the end of January, 1978, as a result of the defense's assertion that the first trial date was much too early. In mid-January, the trial judge denied a defense motion to discharge Garrett for a speedy trial violation. In mid-January, the defense then sought a writ of prohibition from the appellate court and obtained an order to show cause. However, the prohibition proceedings were subsequently dismissed on March 3, 1978 in *State ex rel. Garrett v. Morphonios*, 356 So.2d 392 (Fla. 3d DCA 1980). (TR. 252; R. 77-78, 95-107).

On April 24, 1978, Garrett pled guilty to both crimes. He was sentenced to life imprisonment and a

consecutive ten year sentence. The Defendant's plea was subsequently changed by counsel to utilize a procedure allowing Garrett to take an appeal.[3] Garrett expressly and *exclusively* limited his appeal to the issue of whether his federal and Florida speedy trial rights were violated. (R. 108-115; 239, 241; TR. 276-283).

Both the Defendant and the State of Florida filed briefs in the lower appellate court, which briefs exclusively addressed Garrett's speedy trial claims. The decision of *Jackson v. Indiana*, 406 U.S. 715 (1972), was not relied on at all in these briefs.[4]

On November 4, 1980, the lower appellate court surprised the State of Florida by rendering a decision based exclusively on *Jackson v. Indiana, supra.* The lower appellate court did not address the Defendant's speedy trial claims at all. (App. 1-4).

In a lengthy motion for rehearing, the State of Florida contended (1) that the appellate court decided this case on an issue not before it and should resolve this case solely on speedy trial grounds, and (2) that *Jackson* was misinterpreted by the court in that *Jackson* did not require discharge from criminal liability merely

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[3]This procedure is authorized under Florida law by means of a plea of nolo contendere, but permits only an appeal of legal issues that would be dispositive of the case. *Brown v. State*, 376 So.2d 382 (Fla. 1979); *State v. Ashby*, 245 So.2d 255 (Fla. 1971).

[4]*Jackson* was cited by the State of Florida solely as an historical fact in a parenthetical note, while commenting on Dr. Mutter's past recommendations in terms of the Defendant's speedy trial claims.

because a defendant is incompetent and not substantially likely to regain competence in the forseeable future, but rather required release from confinement pending trial. (App. 8-17). The appellate court entered an order denying this motion for rehearing, without further discussion. (App. 5).

REASONS FOR GRANTING THE WRIT

In *Jackson v. Indiana*, 406 U.S. 715 (1972), this Court reviewed a pre-trial order committing a criminal defendant to a mental hospital pending trial. That defendant was not mentally ill in the medical sense, but was handicapped to the degree that he was then legally incompetent to be tried consistent with the Constitution. This Court found due process and equal protection deficiencies in the Indiana pre-trial commitment procedure that would, in effect, permit indefinite confinement of that criminal defendant, without the rights and protections given to similarly handicapped non-criminally-charged persons and without a trial to determine his guilt or innocence on the very criminal charges which were being used as the exclusive basis for his confinement. Regarding release *from the mental institution* pending trial, this Court held that such detention for trial must be limited to no "more than the reasonable period of time necessary to determine whether there is a substantial probability that [the defendant] will attain [the] capacity [to stand trial] in the forseeable future." *Id*, 406 U.S. at 738. This Court also held that, even if the first condition for continued confinement was realized, continued commitment must be justified by progress toward the goal of legal competency to

stand trial. *After* ruling on the lawfulness of Jackson's pre-trial detention, this Court commented on *the right to try* the defendant on the pending criminal charges, but expressly refrained from ruling on that issue. This Court did suggest, "*Dismissal of the charges* against an incompetent accused [is] justified on . . . the . . . right to a speedy trial, or the denial of due process inherent in holding pending criminal charges indefinitely over the head of one who will never have a chance to prove his innocence." *Id*, 406 U.S. at 740. This latter portion of *Jackson* was unambigously separated from the pre-trial detention issues.

Jackson did not hold that any right to release from pre-trial detention pending trial also constituted a right not to be tried on the criminal charges. Indeed, it is an established rule of federal constitutional law that an "illegal . . . detention does not void a subsequent conviction." *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975).

In the instant case, the lower appellate court reversed Garrett's judgment of conviction solely "on the basis that, under the holding of *Jackson v. Indiana*, 406 U.S. 715 . . . (1972), he should never have been brought to trial." Noting that *Jackson* was decided on due process and equal protection grounds, the particular holding, on which this decision was based and which was quoted in the opinion, was that portion of *Jackson* addressing the right to pre-trial release from a mental institution.[5]

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[5]The lower appellate court never analyzed the facts in terms of the speedy trial analysis mandated by *Barker v. Wingo*, 407 U.S. 514 (1972), and the status of the case at the time of the plea, *United States v. MacDonald*, 435 U.S. 850 (1978). From a speedy trial perspective, the State of Florida's position that Garrett was

(App. 2-3) The lower court concluded (App. 3-4):

> On these facts, we find Garrett to have been held more than a "reasonable period" without the requisite determination of the likelihood of his eventual ability to stand trial. Moreover, since it appears that the trial court was of the opinion that Garrett was per se incompetent while under the influence of his medication—a belief not legally untenable until 1977 (when Section 918.15(4)(a), *supra*, was passed), it is clear that had the court held the hearing mandated by *Jackson*, at any time prior to 1977, it would necessarily have found Garrett permanently incompetent. Under *Jackson*, the trial court should have entertained civil commitment proceedings by the state, or released him.
>
> We reverse and order that the court below discharge Garrett unless the State shall elect to commence civil proceedings within thirty days from the issuance of our mandate.

(Footnote 5 Continued)

not entitled to a dismissal of charges is strong. *See, e.g., United States v. Mills*, 434 F.2d 266 (8th Cir. 1970); *United States v. Beidler*, 417 F.Supp. 608 (M.D. Fla. 1976); *United States v. Lancaster*, 408 F.Supp. 225 (D.D.C. 1976); *United States ex rel. Daniels v. Johnston*, 328 F.Supp. 100 (S.D.N.Y. 1971); *Campbell v. State*, 265 Ark. 77, 576 S.W. 2d 938 (1979); *People v. Lang*, 62 Ill. App. 3d 688, 378 N.E. 2d 1106 (1978); *Harris v. State*, 262 Ind. 208, 314 N.E. 2d 45 (1974); *State v. Bauer*, __ Minn. __, 299 N.W. 2d 493 (1980); *State v. Brown*, 502 S.W. 2d 295 (Mo. 1973); *State v. Johnson*, 579 S.W. 2d 771 (Mo. Ct. App. 1979); *State v. Durham*, 545 P.2d 805 (Okla. Crim. App. 1976); *Fry v. State*, 529 P.2d 521 (Okla. Crim. App. 1974); *Commonwealth v. McQuaid*, 464 Pa. 499, 347 A.2d 465 (1975).

It is clear from the face of this opinion that this case was resolved *exclusively* on a federal constitutional basis. This analysis and result directly conflicts with the aforementioned decisions of this Court.[6] A State may not impose greater restrictions, as a matter of federal constitutional law, when this Court specifically refrains from imposing them. *Fare v. Michael C.*, 442 U.S. 707 (1979); *Oregon v. Hass*, 420 U.S. 714 (1975).

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[6]It is clear that Garrett was not illegally incarcerated prior to being adjudicated competent to stand trial.

It is indisputable that Garrett was civilly committable during the entire period of time which elapsed prior to his guilty plea and that such a commitment would have been constitutional. *O'Connor v. Donaldson*, 422 U.S. 563 (1975); *In re Beverly*, 342 So.2d 481 (Fla. 1977).

No psychiatrist suggested that Garrett could not attain legal competence in the forseeable future. Unlike the factual situation in *Jackson*, Garrett was mentally ill, suffering from paranoid schizophrenia. Treatment takes time. Given the seriousness of a charge of first-degree murder and the nature of Garrett's illness, the seven year period that was consumed before Garrett was adjudicated legally competent cannot be deemed constitutionally unreasonable. And, of course, the best demonstration of what could be was what did occur. Garrett was adjudicated competent to stand trial within seven years.

Although bail was never sought, it cannot now be seriously contended that Garrett would have been released on bail, even if it is assumed that Garrett was not mentally ill.

Finally, any issue that Garrett had been entitled to release pending trial became moot after his guilty plea. *See Weinstein v. Bradford*, 423 U.S. 147 (1975); *compare Gerstein v. Pugh*, 420 U.S. 103 (1975). In this regard, the lower appellate court ruled on a controversy that no longer existed.

Moreover, the decision *sub judice* directly conflicts with the following decisions of other state courts of last resort. *State v. Superior Court of Maricopa County*, 113 Ariz. 432, 556 P.2d 6 (1976); *People v. Lang*, 76 Ill. 2d 311, 391 N.E. 2d 350 (1979); *People v. Lang*, 62 Ill. App. 3d 688, 378 N.E. 2d 1106 (1978); *People v. Ealy*, 49 Ill. App. 3d 922, 365 N.E. 2d 149 (1977); *People v. Williams*, 48 Ill. App. 3d 842, 362 N.E. 2d 1306 (1977); *State v. Bauer*, ____ Minn. ____, 299 N.W. 2d 493 (1980); *Brown v. Jaquith*, 318 So.2d 856 (Miss. 1975); *Commonwealth v. McQuaid*, 464 Pa. 499, 347 A.2d 465 (1975); *Commonwealth v. Kerrigan*, ____ Pa. Super. Ct. ____, 413 A.2d 729 (1979); *State ex rel. Desinger v. Treffert*, 85 Wis. 257, 270 N.W. 2d 402 (1978); *State ex rel. Porter v. Wolke*, 80 Wis. 2d 197, 257 N.W. 2d 881 (1977); *State ex rel. Haskins v. County Court of Dodge County*, 62 Wis. 2d 250, 214 N.W. 2d 575 (1974).[7] Those decisions show that the *Jackson* right to release from a mental institution pending trial, itself, *does not* vitiate the right of the government to later try a defendant for his crime.

By equating the right to release from a mental institution pending trial with the right to pre-trial release on bail, the legal error in the analysis employed by the lower appellate court becomes glaringly apparent.

Recent history has shown that the mentally ill, or those claiming mental illness, have committed and will continue to commit crimes that shock the nation. The frustration that the general public has with the judicial response to mental illness in the criminal justice system

[7]The lower appellate court's decision also conflicts with *United States v. Lancaster*, 408 F.Supp. 225 (D.D.C. 1976).

is great. The question presented for review in this case is a substantial one in terms of its effect on the administration of criminal justice. The recurring nature of this problem warrants a clarification of *Jackson v. Indiana*, 406 U.S. 715 (1972) by this Court.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion in *Garrett v. State*, 390 So.2d 95 (Fla. 3d DCA 1980).

Respectfully submitted,

JIM SMITH
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By: /s/
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Counsel for Petitioner

Appendix

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1980

CASE NO. 78-1098

WILLIE ALLEN GARRETT,
Appellant,

vs.

THE STATE OF FLORIDA,
Appellee.

Opinion filed November 4, 1980.

An Appeal from the Circuit Court for Dade County, Ellen Morphonios Gable, Judge.

Terry L. DeMeo; Louis R. Beller; Bruce J. Winick, for appellant.

Jim Smith, Attorney General and Steven L. Bolotin, Assistant Attorney General, for appellee.

Before HUBBART*, C.J., and HENDRY and NESBITT, JJ.

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*Judge Hubbart participated in the decision in this case but did not hear oral argument.

PER CURIAM.

Appellant was arrested on May 23, 1970, and charged with first-degree murder of a police officer, and arson in the second degree. Trial by jury was waived. At his arraignment on July 9 of that year, the issue of his competency was first raised. Three psychiatrists were appointed at that juncture to assess Garrett's ability to participate meaningfully in his defense. After receiving the evaluation reports of the three experts, the court found Garrett incompetent to stand trial. He was placed into the custody of the state's Division of Mental Health, Department of HRS, and admitted into Florida State Hospital at Chattahoochee for restoration to competency. There he was treated with psychotropic medication, and his symptomatology entered a period of remission. On October 14, 1971, the Clinical Director of that institution informed the court that appellant had been turned over to the Dade County Sheriff's Office for further disposition, i.e. to stand trial.

Thereafter, the court ordered Garrett removed from all medication, to assess the change, if any, in his faculties. Garrett soon relapsed into his earlier psychotic state, and was thereupon returned to Chattahoochee.

This process of remission and relapse occurred repeatedly over the next six years, until Garrett was finally positively evaluated for competency while under medication pursuant to Section 918.15(4)(a), Florida Statutes (1977). He entered a *nolo* plea, reserving the right of appeal to this court.

We reverse the judgment of the court below on the basis that, under the holding of *Jackson v. Indiana*,

406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), he should never have been brought to trial.

Jackson was a twenty-seven-year-old deaf-mute of pre-school mentality arrested for two robberies netting him a total of nine dollars. Obviously unable to assist in his own defense, he was committed to the Indiana equivalent of Chattahoochee, until such time as he should be ready to stand trial. After a period of years, his incarceration was challenged on due process and equal protection grounds. After state court avenues of relief had been exhausted, his case was heard by the Supreme Court, which held, inter alia, that

> a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil committment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.

32 L.Ed.2d at 451.

On these facts, we find Garrett to have been held more than a "reasonable period" without the requisite determination of the likelihood of his eventual ability to stand trial. Moreover, since it appears that the trial court was of the opinion that Garrett was per se

incompetent while under the influence of his medication — a belief not legally untenable until 1977 (when Section 918.15(4)(a), supra, was passed), it is clear that had the court held the hearing mandated by *Jackson*, at any time prior to 1977, it would necessarily have found Garrett permanently incompetent. Under *Jackson*, the trial court should have entertained civil commitment proceedings by the state, or released him.

We reverse and order that the court below discharge Garrett unless the state shall elect to commence civil proceedings within thirty days from the issuance of our mandate.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1980
MONDAY, DECEMBER 8, 1980

CASE NO. 78-1098

WILLIE ALLEN GARRETT,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Counsel for appellee having filed in this cause motion for rehearing, and same having been considered by the court which determined the cause, it is ordered that said motion be and it is hereby denied.

A True Copy

ATTEST:

[Signature illegible]

Clerk District Court of
Appeal, Third District

SUPREME COURT OF FLORIDA
FRIDAY, APRIL 10, 1981

CASE NO. 60,065

District Court of Appeal,
3d District — No. 78-1098

STATE OF FLORIDA,

Petitioner,

v.

WILLIE ALLEN GARRETT,

Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

BOYD, Acting C. J., OVERTON, ENGLAND, ALDERMAN and McDONALD, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

by: [Signature illegible]
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CASE NO. 78-1098

WILLIE ALLEN GARRETT,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

MOTION FOR REHEARING

Appellee hereby moves this court for rehearing in the above cause and in support thereof states the following:

I

CONSIDERATION OF THE ISSUE WHICH FORMED THE BASIS FOR THIS COURT'S OPINION WAS IMPROPER.

(1) This court found that reversal should result due to the failure of the trial court to hold a hearing as to the likelihood of Appellant's eventual ability to stand trial and the fact that it is apparent from the record that had such a hearing been held, the trial court would have necessarily found Appellant permanently incompetent. Slip opinion at 3.

(2) The question of whether these factors require reversal, however, *was not raised as an issue in this*

case. It was not briefed by either party or even asserted by Appellant. Rather, the issue here was phrased strictly in speedy trial terms, both rule and constitutional. (Appellant's brief, p. i). Indeed, Appellant could not have raised the issue in any other way, as this appeal arose pursuant to a plea of nolo contendere. Under such circumstances, only the claim or claims specifically reserved may be considered on appeal.

(3) Appellee therefore submits that the issue upon which this court decided this case is not a proper matter to be considered in this proceeding and that rehearing should be granted and the case dealt with strictly on the the speedy trial claims.

II

THE REQUIREMENTS OF *JACKSON V. INDIANA*, 406 U.S. 715 (1972) DO NOT MANDATE THE CONCLUSION REACHED BY THIS COURT.

(4) Even if the issue determined by this court is held to be a proper subject to consider, rehearing should nonetheless be granted as this court's conclusion that Appellant has to be discharged or that civil committment proceedings have to be commenced is based upon a misinterpretation of the dictates of *Jackson v. Indiana*, 406 U.S. 715 (1972), the case upon which this court primarily relied.

(5) The opinion in *Jackson in no way requires discharge from criminal liability* of a defendant who is incompetent to stand trial. Indeed, the Court specifically

declined to hold in such a manner. 406 U.S. at 739. The court noted that dismissal of charges against an incompetent might be justified in a given case on a speedy trial or due process analysis, but to hold, as this court has, that *Jackson* requires discharge merely because a defendant is incompetent and not substantially likely to regain competence in the foreseeable future is clearly a misinterpretation of the opinion.

(6) This fact is made apparent not just by the language of *Jackson*, but also by the opinion in *United States v. Lancaster*, 408 F.Supp. 225 (D.C. Cir. 1976), in which the government was required pursuant to *Jackson* to either release or civilly commit an incompetent defendant. Following an unsuccessful attempt to commit, the defendant was released to the custody of his aunt. Despite numerous continued findings of incompetency and unlikelihood that the defendant would become competent, the trial court analyzed the question under a speedy trial analysis and found that since, under the facts of that case, no speedy trial violation had occurred, dismissal was unwarranted. A similar conclusion was reached in *Commonwealth v. Kerrigan*, 413 A.2d 729 (Penn. 1979). See also *In re Harmon*, 425 F.2d 916 (1st Cir. 1970) (if incompetent defendant is committed to custody of Attorney General under federal law, court should require frequent reports on accused's mental condition, demonstrating the court's intention that the charges would remain pending); *United States ex rel. von Wolfersdorf v. Johnston*, 317 F.Supp. 66 (S.D.N.Y. 1970) (state defendant confined for nearly 20 years as incompetent in hospital for criminally insane entitled to civil committment, but question of whether he could be tried should he regain competence was speedy trial

question). Cf. *State v. Lee*, 602 P.2d 944 (Hawaii 1979) (motion for judgment of acquittal on basis of incompetence at time of trial should be deferred and case suspended until defendant can assist counsel; potential prejudice neutralized by court's authority under Hawaii law to dismiss when sufficient time has passed that it would be unjust to resume proceedings, an analysis very similar to a constitutional speedy trial analysis.

(7) Also instructive is the United States Supreme Court's opinion in *Drope v. Missouri*, 420 U.S. 162 (1975). In that case, the Court found that the state trial court erred in not holding a hearing at the time of trial as to the defendant's competence, but noted specifically that the State was free to retry the defendant if found to be competent. 420 U.S. at 183. See also *Lokes v. Capps*, 625 F.2d 1258, 1268, n.5 (5th Cir. 1980), viewing in issue in terms of speedy trial analysis.

(8) The reasoning of this line of cases is applicable here. The framework within which the issue presented should be considered is strictly a speedy trial one. The requirement of *Jackson* that upon a finding of incompetence, a defendant be committed or released means just that and no more, released, free to walk the streets, but certainly not discharged from criminal liability merely because of his incompetence. It must be remembered that the holding in *Jackson* was addressed to the primary question presented by that case, whether the defendant was entitled to *release from confinement* since he had neither been convicted nor committed. In no way did it hold that the criminal charges cannot proceed when, as here, the defendant reaches a state of competence. Thus, *Jackson* does not stand for the

proposition that discharge is warranted and this court should reconsider its opinion accordingly.

III

THE FACT THAT THE TRIAL COURT DID NOT MAKE A DETERMINATION OF THE LIKELIHOOD OF APPELLANT BECOMING COMPETENT TO STAND TRIAL DOES NOT SUPPORT THE RESULT REACHED BY THIS COURT.

(9) As noted in the discussion under part II of this motion, a defendant who is incompetent and unlikely to become so in the foreseeable futute is not entitled to discharge from criminal liability, but only to release or committment. Thus, had the trial court held the hearing contemplated by *Jackson*, regardless of what action it took within the dictates of *Jackson*, the fact would remain that Appellant, upon regaining competency, would still have been subject to prosecution, assuming that dismissal would not have been required under a speedy trial analysis. Thus, any remedy Appellant might have as regards the failure to properly hold a hearing should not relate to the charges against him, as any error as to this matter would not have affected those charges, and surely should not compel reversal. See *Florida Statutes* §924.33. Rather, whatever remedy Appellant might have would be by way of a civil suit for damages. See *O'Connor v. Donaldson*, 422 U.S. 563 (1975).

(10) Even if discharge would have been appropriate upon a finding of incompetency, it cannot be concluded

that that would have been the action the trial court would have taken had it conducted a hearing under *Jackson*. This is so for a number of reasons. (A) In the first place, no emphasis was placed in the psychological evaluations on the likelihood of Appellant returning to competence. Had this matter been at issue, the question would have been dealt with in detail and the trial court's decision would have undoubtedly taken this factor into account. There is no way of knowing what conclusions would have been reached in this regard. (B) Further, there can be no doubt that at the time Appellant was evaluated, the question of whether a defendant could be considered competent while on psychotropic medication was one which was open to question. Although the trial court did, as this court noted, believe that a defendant could not be competent in such a situation, it is quite possible that if the court was faced with the alternative of either trying or releasing the defendant, it might have chosen to try him, recognizing that the position that the defendant was competent was clearly at least arguable, thereby allowing the matter to be determined by an appellate court. (C) In addition, the matter might have been determined by an appellate court contrary to the trial court's belief in a proceeding instituted by the state, be it appeal or extraordinary writ. In fact, in at least two cases in other jurisdictions, courts have in the body of orders dealing with similar issues, stayed the effect of the order to allow for a government appeal. *United States v. Pardue*, 354 F.Supp. 1377 (D.Conn. 1973); *United States v. Jackson*, 306 F.Supp. 4 (N.D. Cal. 1969). (D) It should also be considered that the mere expressions of initial opinion expressed by the court would not necessarily have been the final result reached by the court had it dealt squarely with

the issue in the context of a hearing, having at that time the benefit of argument by counsel to the precise point and of the court's own research.

(11) Even if it is held that the trial court, had it held a hearing, would have discharged Appellant from criminal liability and that such discharge would not have been disturbed by an appellate court, the action taken by this court would still be inappropriate. This is so because the trial court in reaching such a conclusion would have been wrong, since, as has become apparent subsequent to the time at which a hearing would have been held, Appellant was in fact competent at the time. As both parties have noted in their briefs, and as this court implicitly noted in its opinion by pointing out that the trial court's belief was not untenable until 1977, a person who is competent only on psychotropic medication can properly be tried. Thus, Appellant was in fact competent to have stood trial at the time a hearing under *Jackson* would have been held. This court's conclusion can therefore only be sustained on a theory that because the trial court would have acted erroneously if it had acted at all, the proper remedy is to remand with directions that the erroneous action occur. Such an approach is clearly inappropriate. The law that applies on appeal is that in effect at the time an appeal is decided, even when there has been a change of law since the time of the trial. *Wheeler v. State*, 344 So.2d 244 (Fla. 1977); *Evans v. St. Regis Paper Co.*, 287 So.2d 296 (Fla. 1973); *Williams v. Wainwright*, 325 So.2d 485 (Fla. 4th DCA 1975); *Cosby v. State*, 297 So.2d 617 (Fla. 1st DCA 1974). In reaching its conclusion here, this court is applying not the law at the time of the appeal, not even the law at the time of the trial, but

the trial judge's apparent misconception of the law at that time. Appellee submits that such an approach is wholly unwarranted. Moreover, since, as has been previously pointed out, the result that would have been reached had the trial court held a hearing, would have, at best for Appellant, been the same as was actually reached, that is, he would not have been tried until it became clear that a person on psychotropic medication could properly be held competent, any error in not holding a hearing cannot be considered grounds for reversal as it in no way would have injuriously affected Appellant's substantive rights. *Florida Statutes* §924.33.

IV

CONSIDERING THIS CASE WITHIN A SPEEDY TRIAL FRAMEWORK, REVERSAL SHOULD NOT RESULT.

(12) As noted in part I of this motion, the only issue reversed and presented to this court was the question of whether Appellant was denied a speedy trial. As discussed throughout this motion, the real question to be determined in considering the propriety of trying a defendant who has previously been held incompetent is a speedy trial question. Thus, this court's attention should focus on that issue in determining whether reversal is appropriate in the present case.

(13) As to this issue, it should be noted that Appellant has presented claims that both his constitutional and rule speedy trial rights were violated. As regards each of these claims, Appellee relies upon the argument set forth in its brief. Appellee notes additionally, however, the existence of a case, decided subsequent to the filing of briefs and to argument in this cause, which compels the conclusion that Appellant's claims must be rejected as regards the claimed constitutional violation. In *Sliger v. State*, 382 So.2d 373 (Fla. 5th DCA 1980), the court held that a claim of a constitutional speedy trial violation may not be reversed for review on a plea of nolo contendere, in that proceeding in such a manner deprives the court of a chance to assess the prejudice to the defendant, a key factor in reviewing such claims. Indeed, a defendant might well, in a given case, be able to present as able a defense many years after the fact as he might have at the time the charges are filed, or at least be able to present a sufficient defense that he might be acquitted. When no trial is held, however, it is impossible to assess these factors. The reasoning of *Sliger* is equally applicable here and should preclude review of Appellant's constitutional claim. This case should therefore be considered only as a rule speedy trial case and should be, for the reasons set forth in Appellee's brief, affirmed.

WHEREFORE, Appellee respectfully requests that this court grant rehearing in the above cause and affirm the judgment of the trial court.

Respectfully submitted,

JIM SMITH
Attorney General

/s/
ANTHONY C. MUSTO
Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the instant Petition for a Writ of Certiorari was mailed by depositing same for mailing at a United States post office with first-class postage pre-paid to counsel for Respondent Garrett, Terry L. DeMeo, DeMeo and Sherman, P.A., ACLU Foundation of Florida, Inc., 3081 Salzedo Street, Coral Gables 33134, and Bruce J. Winick, ACLU Foundation of Florida, Inc., University of Miami School of Law, P.O. Box 248087, Coral Gables, Florida 33124, and Louis R. Beller, ACLU Foundation of Florida, Inc., 420 Lincoln Road, Suite 238, Miami Beach, Florida 33139, on this the 9th day of July, 1981.

/s/ _____
ARTHUR JOEL BERGER
Assistant State Attorney